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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION
11

12 TRAVONNE BORDERS, an
13 individual,

14 Plaintiff,

15 v.

16 INTERNATIONAL PAPER
COMPANY, a New York
17 corporation; ANGIE DOE, an
individual; and DOES 1 through 20,
18 inclusive,

19 Defendants.

Case No. _____
Previously known as Los Angeles
Superior Court Case No. 22STCV15935

**DEFENDANT'S NOTICE AND
PETITION OF REMOVAL OF
ACTION PURSUANT TO 28 U.S.C.
§§ 133S, 1441, AND 1446**

State Court Complaint Filed: 5-12-2022
Trial Date: [not set]

CASE NO.

DEFENDANT'S NOTICE AND PETITION OF REMOVAL OF ACTION

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**TO THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF TRAVONNE
BORDERS AND HIS COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. sections 1332(a), 1441(b) and 1446(b), Defendant INTERNATIONAL PAPER COMPANY (“Defendant” or “International Paper”), removes the above-entitled action from the Los Angeles Superior Court of the State of California to the United States District Court for the Central District of California. In support of removal, Defendant states as follows:

I. STATEMENT OF JURISDICTION

1. This matter is a civil action over which this District Court has original jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a). This action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, Pursuant to U.S.C. § 1446(b), this notice of removal is filed within 30 days after the receipt by the defendant and includes a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

II. VENUE

2. Pursuant to 28 U.S.C. section 1441(a), venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” This action was filed in the California Superior Court for the County of Los Angeles. Thus, venue properly lies in the United States District Court for the Central District of California. *See* 28 U.S.C. §§ 84(c), 1391, and 1441.

III. PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

3. On May 12, 2022, Plaintiff TRAVONNE BORDERS (“Plaintiff”) filed a Complaint in the Superior Court of the State of California, County of Los Angeles, entitled, TRAVONNE BORDERS, an individual v. INTERNATIONAL

1 PAPER COMPANY, a New York corporation; ANGIE DOE, an individual; and
 2 DOES 1 through 20, inclusive, Case No. 22STCV15935 (the “Complaint”).
 3 Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Complaint is
 4 attached as **Exhibit A** to the Declaration of Christopher M. Champine (“Champine
 5 Decl.”), ¶ 2. The allegations of the Complaint are incorporated by reference in this
 6 Notice of Removal without admission of or agreement to the truth of any of them.

7 4. Plaintiff’s Complaint asserts causes of action for: (1) Discrimination
 8 in Violation of Gov’t Code §§ 12940, *et seq.*; (2) Harassment in Violation of Gov’t
 9 Code §§ 12940, *et seq.*; (3) Retaliation in Violation of Gov’t Code §§ 12940, *et*
 10 *seq.*; (4) Failure to Prevent Discrimination, Harassment and Retaliation in
 11 Violation of Gov’t Code § 12940(k); (5) Retaliation in Violation of Gov’t Code §§
 12 12945.2, *et seq.*; (6) Failure to Provide Reasonable Accommodations in Violation
 13 of Gov’t Code §§ 12940, *et seq.*; (7) Failure to Engage in a Good Faith Interactive
 14 Process in Violation of Gov’t Code §§ 12940, *et seq.*; (8) Declaratory Judgment;
 15 (9) Wrongful Termination in Violation of Public Policy; (10) Failure to Provide
 16 Rest Periods (Cal. Labor Code §§ 226.7); (11) Failure to Provide Itemized Wage
 17 and Hour Statements (Cal. Labor Code §§ 226, *et seq.*); (12) Waiting Time
 18 Penalties (Cal. Labor Code §§ 201-203); (13) Private Attorney General Act (Cal.
 19 Labor Code § 2699, *et seq.*); and (14) Unfair Competition (Bus. & Prof. Code
 20 § 17200, *et seq.* Champine Decl., **Exhibit A**, ¶¶ 37-159.

21 5. On May 17, 2022, Plaintiff served a copy of the Summons and
 22 Complaint and related papers on International Paper Company’s registered agent
 23 for service of process. Declaration of Cissy Braslow (hereinafter “Braslow Decl.”),
 24 ¶ 7. Accordingly, the removal is timely under 28 U.S.C. § 1446(b). True and correct
 25 copies of the Summons, Civil Case Cover Sheet, Notice of Case Assignment and
 26 Case Management Conference, and Proof of Service of Summons are attached as
 27 **Exhibit B** to Champine Decl., ¶ 3.

28 6. The Complaint (**Exhibit A**), and the Summons, Civil Case Cover

1 Sheet, Notice of Case Assignment and Case Management Conference, and Proof
 2 of Service of Summons (**Exhibit B**) are the only pleadings, process, or orders that
 3 have been served upon Defendant. or that Defendant is aware of having been filed
 4 in this action. Champine Decl., ¶ 5.

5 7. This Notice of Removal is timely filed because it is filed within thirty
 6 (30) days of service of the initial pleading setting forth the claim for relief upon
 7 which the State Lawsuit is based. *See* 28 U.S.C. § 1446(b)(3); *see also Murphy*
 8 *Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (11th Cir. 1999). In
 9 addition, this Notice of Removal has been filed within one year of commencement
 10 of the State Lawsuit as required by 28 U.S.C. § 1446(b). Therefore, this Notice of
 11 Removal has been timely filed.

12 **IV. REMOVAL IS SUBJECT TO A LIBERAL PLEADING STANDARD**

13 8. In 2014, the U.S. Supreme Court held that notices of removal are
 14 subject to the same general pleading standards applicable to complaints pursuant
 15 to Rule 8(a) of the Federal Rules of Civil Procedure. *Dart Cherokee Basin*
 16 *Operating Co., LLC v. Owens*, 135 S.Ct. 547, 553 (2014). Accordingly, such
 17 notices need not attach evidence or meet a burden of proof, but rather need only
 18 contain a “short and plain statement of the grounds for removal.” *Id.*; 28 U.S.C. §
 19 1446(a). Only if the Court, or another party, contests the allegations of removability
 20 must the removing party submit evidence supporting its allegations, whereupon
 21 removability is decided under a preponderance of evidence standard. *Dart*
 22 *Cherokee* at 553-554.

23 **V. GROUNDS FOR REMOVAL**

24 **A. Removal is Warranted Because Complete Diversity of Citizenship** 25 **Exists Between Plaintiff and Defendants**

26 *1. Citizenship of Plaintiff*

27 9. For diversity purposes, a person is a “citizen” of the state in which he
 28 is domiciled. 28 U.S.C. § 1332 (a)(1); *see also Kanotor v. Wellesley Galleries, Ltd.*,

704 F.2d 1088 (9th Cir. 1983); *Kramer v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (confirming that a person’s domicile is the place he resides with the intention to remain). Residence is *prima facie* evidence of domicile. *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994); *Marroquin v. Wells Fargo, LLC*, No. 11CV163-L BLM, 2011 WL 476540, at *1 (S.D. Cal. Feb. 3, 2011). In fact, it is presumed that a natural person’s residence is also his or her domicile, and a party resisting this presumption bears the burden of producing contrary evidence. *Lew v. Moss*, 797 F.2d 747, 751 (9th Cir. 1986).

10. In his Complaint, Plaintiff alleges that, at the time of the filing of his Complaint, he was a resident of Los Angeles County, State of California. *See* Champine Decl., **Exhibit A**, Compl. ¶ 2. Nothing in the Complaint or other pleadings suggests otherwise. Accordingly, Plaintiff is domiciled in and is a citizen of the State of California.

2. *Citizenship of Defendant*

11. For purposes of diversity jurisdiction, a corporation's citizenship may be dual, in that a corporation may be deemed a citizen of every state by which it has been incorporated *and* of the state where it has its principal place of business. *See* 28 U.S.C.A. § 1332(c). However, the citizenship of a corporation is a corporation's “principal place of business” or “nerve center,” which is normally its corporate headquarters. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1183 (2010). A corporation’s “principal place of business” or “nerve center” refers to the place where a corporation's board and high-level officers direct, control and coordinate its activities. *Id.* at 1186, 1192.

12. A corporation merely doing business within the forum state is not enough to establish the corporation’s “principal place of business” or “nerve center” for purposes of diversity jurisdiction or removal purposes. *Id.* at 1194 (“if the bulk of a company's business activities visible to the public take place in New

1 Jersey, while its top officers direct those activities just across the river in New York,
 2 the ‘principal place of business’ is New York.”).

3 13. Defendant International Paper Company is a citizen of New York and
 4 Tennessee, as International Paper is incorporated in New York and has its principal
 5 place of business in Tennessee. Braslow Decl., ¶ 5. Moreover, Defendant’s
 6 “principal place of business” and “nerve center” are located within the state of
 7 Tennessee. *See Id.*, at ¶ 6. International Paper maintains its corporate headquarters
 8 in Memphis, Tennessee. *Id.*, at ¶ 6. High level officers of International Paper work,
 9 direct, control, and coordinate activities of International Paper out of Tennessee.
 10 Indeed, Members of International Paper's senior executive team, including the
 11 Chief Executive Officer, Chief Financial Officer, Controller, General Counsel and
 12 Secretary, and Senior Vice President of Human Resources all work out of
 13 International Paper’s corporate headquarters in Memphis, Tennessee. *Id.*, at ¶ 6. In
 14 addition to conducting executive meetings at the Memphis, Tennessee
 15 headquarters, these officers primarily perform their day-to-day job duties in
 16 Memphis, Tennessee, including controlling, directing and coordinating the
 17 activities of International Paper. *Id.*, at ¶ 6.

18 14. Thus, for purposes of establishing diversity jurisdiction and this action
 19 for removal, Defendant is a citizen of New York and Tennessee, not California.

20 3. *Citizenship of DOES 1-20*

21 15. The Complaint also names as Defendants DOES 1 through 20 (“DOE
 22 Defendants”). The twenty (20) “Doe” Defendants named in the Complaint are not
 23 considered in assessing diversity. *See, e.g., Newcombe v. Adolf Coors Co.*
 24 157 F.3d 686, 690-91 (9th Cir. 1998) (“28 U.S.C. §1441(a) explicitly provides that
 25 the citizenship of defendants sued under fictitious names shall be disregarded for
 26 purposes of removal. As such, the district court was correct in only considering the
 27 domicile of the named defendants.”). Accordingly, the citizenship of the alleged
 28 Doe Defendants does not impact the diversity analysis for removal.

1 **B. Removal is Warranted Because Angie DOE is a Sham Defendant**

2 16. Plaintiff's Complaint alleges that defendant Angie DOE is a citizen of
 3 California. *See* Champine Decl., **Exhibit A**, Compl. ¶ 7. However, even a non-
 4 diverse defendant named in a state court action is disregarded for diversity
 5 jurisdiction purposes if the Court determines that the defendant's joinder in the
 6 litigation is a "sham" or "fraudulent" in that no valid cause of action has been stated
 7 against that defendant. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th
 8 Cir. 2001). "It is commonplace that fraudulently joined defendants will not defeat
 9 removal on diversity grounds." *Ritchey v. Upjohn Drug Co.* 139 F.3d 1313, 1318
 10 (9th Cir. 1998). "If the plaintiff fails to state a cause of action against a resident
 11 defendant, and the failure is obvious according to the settled rules of the state, the
 12 joinder of the resident defendant is fraudulent." *McCabe v. General Foods Corp.*,
 13 811 F.2d 1336, 1339 (9th Cir. 1987). Where, after all disputed questions of fact and
 14 all ambiguities in the controlling state law are resolved in the plaintiff's favor, the
 15 plaintiff cannot recover against the party whose joinder is questioned, the joinder
 16 is considered fraudulent. *Calero v. Unisys Corp.*, 271 F.Supp.2d 1172, 1176 (N.D.
 17 Cal. 2003).

18 17. The only cause of action alleged against Angie Doe is the second
 19 cause of action for harassment. Plaintiff's lone fact alleged in support of the
 20 harassment claim against Angie Doe is in paragraph 24 of the complaint in which
 21 Plaintiff alleges, "Upon returning to work in June 2021, Plaintiff asked Angie Doe,
 22 Employers' human resources manager, to work no more than eight hours per
 23 workday as an accommodation. Angie Doe denied Plaintiff's request and informed
 24 Plaintiff that nobody worked "only" eight hours." Champine Decl., **Exhibit A**,
 25 Compl. ¶ 24.

26 18. Aside from identifying her alleged residency (Compl. ¶ 7), the only
 27 other place Angie Doe is even mentioned is in the following conclusory allegations:
 28 "Plaintiff is informed and believes, and based thereupon alleges, that Defendants,

1 and each of them, including those defendants named as DOES 1-20 and the
 2 INDIVIDUAL DEFENDANT, acted in concert with one another to commit the
 3 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced
 4 one another in the wrongful acts alleged herein, and/or attempted to do so,
 5 including pursuant to Government Code §12940(i)” (Compl. ¶ 10); and,
 6 “Defendants’ conduct described herein was undertaken, authorized, and/or ratified
 7 by Defendants’ officers, directors, and/or managing agents, including, but limited
 8 to Angie DOE and those identified herein as DOES 1 through 20, who were
 9 authorized and empowered to make decisions that reflect and/or create policy for
 10 Defendants.” Champine Decl., **Exhibit A**, Compl. ¶ 32. All other factual
 11 allegations refer to “Employer” or “Defendants” broadly, or not at all. *See, e.g.*,
 12 Champine Decl., **Exhibit A**, Compl. ¶ 18, 20, 26-31, 36.

13 19. To state a cause of action, a complaint must allege “*enough* facts to
 14 state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*,
 15 550 U.S. 544, 570 (2007); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). To
 16 establish a “plausible” claim, the complaint must contain “more than labels and
 17 conclusions” or “formulaic recitations of the elements of a cause of action.”
 18 *Twombly*, 550 U.S. at 555.

19 20. Plaintiff’s Complaint utterly fails to allege enough (if any) facts
 20 justifying his harassment claims against Angie DOE.

21 21. Plaintiff’s conclusion that Angie DOE’s comment amounts to
 22 harassment (or evidence as to any other cause of action incorporated through
 23 reference to all defendants) is wholly unmerited. Angie DOE’s comment is not a
 24 “fact” sufficient to rise to the level of harassment, discrimination, because it alleges
 25 no facts or allegations demonstrating that her comment was not made within the
 26 course of her managerial duties.

27 22. California law makes it clear that personnel management actions
 28 cannot support a harassment claim brought against an individual. At most, those

1 claims could only proceed against the employer. For instance, in *Janken v. GM*
 2 *Hughes Electronics*, 46 Cal. App. 4th 55 (1996), the California Court of Appeal
 3 explained:

4 [T]he Legislature intended that ***commonly necessary personnel***
 5 ***management actions*** such as hiring and firing, job or project
 6 assignments, office or work station assignments, promotion or
 7 demotion, ***performance evaluations, the provision of support***, the
 8 assignment or non-assignment of supervisory functions ... ***do not***
 9 ***come within the meaning of harassment. These are actions of a type***
 10 ***necessary to carry out the duties of business and personnel***
 11 ***management***. These actions may retrospectively be found
 12 discriminatory if based on improper motives, but in that event the
 13 remedies provided by the FEHA are those for discrimination, not
 14 harassment. Harassment, by contrast, consists of actions outside the
 15 scope of job duties which are not of a type necessary to business and
 16 personnel management. This significant distinction underlies the
 17 differential treatment of harassment and discrimination in the FEHA.

18 *Janken*, 46 Cal. App. 4th at 64-65 (emphasis added).

19 In other words, personnel management activity does not fall within the scope of
 20 actionable harassment. *Reno v. Baird*, 18 Cal. 4th 640, 646–647 (1998); *see also*
 21 *Roby v. McKesson Corp.*, 47 Cal. 4th 686, 706 (2009) (“[H]arassment consists of
 22 conduct outside the scope of necessary job performance, conduct presumably
 23 engaged in for personal gratification, because of meanness or bigotry, or for other
 24 personal motives”); *McKenna v. Permanente Medical Group, Inc.*, 894 F.Supp.2d
 25 1258, 1280 (E.D. Cal. 2012).

26 23. In the instant case, Plaintiff’s allegation is comprised of a single
 27 alleged personnel management comment and cannot support a harassment claim.
 28 Plaintiff claims that Angie DOE allegedly told him that “nobody works only eight

hours” when he returned from medical leave and requested to work only eight-hour shifts. Champine Decl., **Exhibit A**, Compl. ¶ 24. Alleged comments about the length of shifts fall squarely within the scope of personnel management activity and cannot constitute unlawful harassment under California law. *See Reno*, 18 Cal. 4th at 646-47. *See, e.g., Janken*, 46 Cal. App.4th at 64–65; *Mendoza v. v. Staples, Inc.*, 2014 WL 6670221, at *3-6 (C.D. Cal. Nov. 24, 2014) (finding that allegations regarding personnel management actions did not amount to harassment under FEHA). Because Plaintiff cannot allege any claims as a matter of law against Angie DOE, she is a “sham” defendant and removal is proper. *Hamilton Materials, Inc., v. Dow Chem. Corp.* (9th Cir. 2007) 494 F.3d 1203, 1206 (“[i]f plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state, the joinder of the resident defendant is fraudulent.”)

C. Removal is Warranted Because Plaintiff Failed to Properly Serve the Only “Local Defendant” Named in His Complaint

24. Even if the court is persuaded that Plaintiff has properly alleged facts sufficiently demonstrating Angie Doe harassed Plaintiff, removal is justified because Plaintiff has failed to serve Angie DOE.

25. Defendant is fully aware of the so-called “local defendant” rule barring removal of cases in which a defendant is named from the forum jurisdiction. However, the argument for removal, endorsed by courts in the Central District, is that the basis for removal under § 1441(b)(2) stems from its language limiting the right to removal to *served* local defendants. The “local-defendant” rule states, “A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest ***properly joined and served*** as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. §1441(b)(2) (emphasis added). Under the plain meaning of the statute, the rule barring removal does not apply when the local defendant is

1 unserved.

2 26. Numerous courts have recognized that the local defendant rule only
 3 applies when the local defendant has been served with the complaint. *Gibbons v.*
 4 *Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019); *Encompass Insur. Co. v.*
 5 *Stone Mansion Rest. Inc.*, 902 F.3d 147 (3d Cir. 2018); *see also Mass. Mut. Life*
 6 *Ins. Co. v. Mozilo*, No. 2:12-cv-03613-MRP-MAN, 2012 WL 11047336, at *2
 7 (C.D. Cal. June 28, 2012); *Loewen v. McDonnell*, No. 19-cv-00467-YGR, 2019
 8 WL 2364413, at *7–8 (N.D. Cal. June 5, 2019); *Zirkin v. Shandy Media, Inc.*, No.
 9 2:18-cv-09207-ODW (SSx), 2019 WL 626138, at *4 (C.D. Cal. Feb. 14, 2019).

10 27. The Central District of California has been at the forefront of granting
 11 snap removals. Cases in which remand was not ordered include *Choi v. GM LLC*,
 12 2021 U.S. Dist. LEXIS 172291 (C.D. Cal. Sept. 9, 2021) (Plaintiffs filed suit in
 13 Los Angeles County Superior Court against GM and three local dealerships. Before
 14 any defendant was served, GM removed the case to federal court. It was undisputed
 15 that the local dealerships were forum defendants, but the court denied remand
 16 stating that, while the “local-defendant” rule states a case otherwise removable on
 17 diversity grounds “may not be removed if any of the parties ... properly ... served
 18 ... is a citizen of the State in which [the] action is brought,” 28 U.S.C. §1441(b)(2)
 19 should be interpreted according its plain meaning); *Zirkin v. Shandy Media, Inc.*
 20 (C.D. Cal., Feb. 14, 2019, No. 218CV09207ODWSSX) 2019 WL 626138. (28
 21 U.S.C. § 1441 does not prevent an unserved forum defendant from removing,
 22 despite all named defendants being forum defendants.).

23 28. Although not binding under this Court’s authority, persuasive
 24 authority for snap removal exists under authority from three other federal circuits
 25 under § 1441(b)(2): the Third Circuit’s *Encompass Ins. Co. v. Stone Mansion*
 26 *Restaurant Inc.*, 902 F.3d 147 (3d Cir. 2018); the Second Circuit’s *Gibbons v.*
 27 *Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019); and the Fifth Circuit’s *Tex.*
 28 *Brine Co., LLC v. Am. Arbitration Ass’n. Inc.*, 955 F.3d 482 (5th Cir. 2020).

29. Plaintiff has not amended his Complaint to provide Ange DOE's last name or identified any other individual DOE defendant in this matter. Champine Decl., **Exhibit A**, Compl. ¶ 8. There is no indication that Plaintiff has served Angie Doe. Champine Decl. ¶ 4. Thus, removal is warranted.

VI. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

30. Diversity jurisdiction exists where the parties are diverse of citizenship and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. §1332(a).

31. Plaintiff's Complaint does not identify the amount in controversy in full for this action. However, the \$75,000 threshold necessary for diversity jurisdiction is not particularly burdensome. In fact, when seeking removal of a state action to federal court based on diversity jurisdiction, "a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014). The failure of the Complaint to specify the total amount of damages or other monetary relief sought by Plaintiff does not deprive this Court of jurisdiction. *See, e.g., Saulic v. Symantec Corp.*, No. SA-CV-07-610-AHS(PLAx), 2007 WL 5074883, *5 (C.D. Cal. Dec. 26, 2007); *Parker-Williams v. Charles Tini & Associates, Inc.*, 53 F.Supp.3d 149, 152 (D.D.C. 2014). A defendant need only to establish by a preponderance of evidence that the claims exceed the jurisdictional minimum. *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 982 (9th Cir. 2013); *Singer v. State Farm Mutual Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997).

32. Plaintiff does not specify a total damage sum in his Complaint. Accordingly, this Court may consider whether it is facially apparent from the Complaint that it is more likely than not that the jurisdiction amount of \$75,000 is in controversy. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

Defendants, however, are not obliged to “research, state, and prove the plaintiff’s claims for damages.” *Singer*, 116 F.3d at 377. Notwithstanding the fact that Plaintiff fails to specify the dollar amount of damages being sought in the Complaint, the allegations of the Complaint demonstrate that Plaintiff seeks damages in excess of the jurisdictional requirement of \$75,000. Economic damages, non-economic damages, general damages, punitive damages and attorneys’ fees are all included in determining the amount in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

33. Defendant adamantly denies Plaintiff’s allegations, denies any liability, and denies Plaintiff has suffered any damages. Nevertheless, in assessing the amount in controversy for diversity jurisdiction purposes, a court must assume that a jury will return a verdict for the plaintiff on all claims made in the complaint. *Bank of California Nat. Ass’n v. Twin Harbors Lumber Co.*, 465 F.2d 489, 491 (9th Cir. 1972); *Roth v. Comerica Bank*, 799 F.Supp.2d 1107, 1117 (C.D. Cal. 2010); *Kenneth Rothchild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d 993, 1001 (C.D. Cal. 2002). This includes any possible award of attorneys’ fees where, as here, a statute at issue awards attorneys’ fees to the prevailing party. *See, Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (“The amount in controversy includes the amount of damages in dispute, as well as attorney’s fees, if authorized by statute or contract.”) (citations omitted); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155 (9th Cir. 1998). Essentially, the ultimate inquiry is what amount is put in controversy by the plaintiff’s complaint, not what the amount of a defendant’s liability (if any) will ultimately be.

34. In the instant case, Plaintiff alleges fourteen causes of action seeking recovery of general damages, including non-economic damages; special damages, including without limitation, loss of wages, salary, and benefits; punitive and exemplary damages; payment of wages, statutory penalties, and waiting time penalties; pre-judgment interest and interest provided by law; and attorneys’ fees

1 and cost of suit. Champine Decl., **Exhibit A**, Compl., Prayer ¶¶1-15. California
 2 federal courts have routinely found that the amount-in-controversy requirement is
 3 satisfied in cases with similar claims. *See, e.g., Rodriguez v. Home Depot, USA,*
 4 *Inc.*, No. 16-CV01945-JCS, 2016 WL 3902838 (N.D. Cal. July 19, 2016) (amount-
 5 in-controversy requirement satisfied in wrongful termination case seeking lost
 6 wages, equitable relief, restitution, punitive damages, and attorneys' fees and
 7 costs); *Castanon v. Int'l Paper Co.*, No. 2:15-CV-08362-ODW, 2016 WL 589853
 8 (C.D. Cal. Feb. 11, 2016) (amount-in-controversy requirement satisfied in
 9 disability discrimination case seeking lost earnings, punitive damages, and
 10 attorneys' fees); *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029 (2002) (amount-in-
 11 controversy requirement satisfied in employment discrimination case seeking
 12 compensatory damages, punitive damages, injunctive relief, and attorneys' fees).

13 35. Here, the amount in controversy exceeds the sum of \$75,000,
 14 exclusive of interest and costs, based on the following allegations and evidence:

15 **A. Special Damages**

16 36. Plaintiff alleges that as a result of Defendants' conduct, he is entitled
 17 to special damages. *See, e.g.,* Champine Decl., **Exhibit A**, Compl., Prayer at ¶ 1.
 18 Under California's Fair Employment and Housing Act, Cal. Gov't Code section
 19 12926, *et seq.*, all non-contractual tort remedies are potentially recoverable,
 20 including back pay, front pay, compensatory damages, punitive damages,
 21 attorneys' fees and costs. *See, e.g., Commodore Home Sys., Inc. v. Super. Ct.*, 32
 22 Cal.3d 211 (Cal. 1982). Plaintiff was employed as a Forklift Operator and was
 23 earning \$22.00 per hour at the time of his termination on October 21, 2021. Braslow
 24 Decl., ¶ 8; Champine Decl., **Exhibit A**, Compl. ¶ 18-19. This amounts to
 25 approximately \$4,928 average monthly pay,¹ not including benefits.

26
 27
 28 ¹ This calculation is based on the rate of \$22.00 per hour and assumes Plaintiff
 worked for eight hours each day, seven days per week, for four weeks in each
 month.

37. Plaintiff makes no allegation in his Complaint that he has found other work, let alone work that pays the same compensation that he previously received from Defendant. Thus, Plaintiff is seeking approximately 7 months of lost wages from the time of his termination in October 2021 to the filing of the Complaint in May 2022 and this claim will continue to accrue during the pendency of this litigation. Therefore, assuming it takes approximately 12 more months before this matter is resolved by trial, Plaintiff will claim approximately 19 months of lost wages, or \$93,632.00 (\$4,928.00 per month x 19 months). However, Plaintiff's claimed lost wage damages do not end there. Plaintiff may also be entitled to "front pay" damages in the form of potential future lost wages beyond even the date of trial, to compensate Plaintiff for lost future expected earnings had the alleged unlawful termination not occurred. Such damages can include pay for multiple years of employment. *See, e.g., Rabago-Alvarez v. Dart Industries, Inc.*, 55 Cal. App. 3d 91, 97 (1976) (4 years' pay deemed reasonable as "front pay" damages). Even assuming Plaintiff only obtains 3 years of front pay damages, this would amount to an additional \$177,408.00.

B. General Damages, Including Emotional Distress

38. Plaintiff also seeks an unspecified amount of general damages, which necessarily include damages for "mental pain and anguish and emotional distress." Champine Decl., **Exhibit A**, Compl., Prayer ¶ 1. Accordingly, it is very likely that Plaintiff will seek a substantial sum for emotional distress damages. *Simmons v. PCR Technology, Inc.*, 209 F.Supp.2d 1029, 1034 (N.D. Cal. 2002) ("emotional distress damages in a successful employment discrimination case may be substantial."). Recent verdicts in employment cases confirm that emotional distress awards may be substantial:

1. *Forer vs. St. Luke's Hospital*, United States District Court, N.D. California, 2001 WL 558058 (N.D. Cal. Mar. 21, 2001) (jury awarded **\$260,000** for emotional distress in connection with the plaintiff's

wrongful termination claim).

2. *Andrews vs. Hansa Stars Inc.*, Superior Court, Los Angeles County, 2009 WL 1587809 (Cal.Super. Apr. 16, 2009) (in connection with wrongful termination claims, two of the plaintiffs awarded **\$375,000** and **\$225,000** for emotional distress damages).

3. *Silverman vs. Stuart F. Cooper Inc.*, Los Angeles County, 2013 WL 5820140 (Cal.Super. July 19, 2003) (jury awarded the plaintiff **\$151,333** for past and future emotional distress in wrongful termination, FEHA discrimination, FEHA retaliation, FEHA harassment/failure to prevent discrimination and harassment, and failure to pay final wages and waiting time penalties case.) *See, Ontiveros v. Michaels Stores, Inc.*, No. CV 12-09437 MMM (FMOx), 2013 WL 815975, at *2 (C. D. Cal. Mar. 5, 2013) (a court may consider verdicts in similar cases when determining whether the amount in controversy exceeds the jurisdictional minimum where the complaint on its face does not identify a specific amount in controversy); *Marcel v. Pool Co.*, 5 F.3d 81, 83 (5th Cir. 1983) (court properly considered jury verdicts in other similar cases to reach conclusion that the amount in controversy exceeded \$75,000.00).

C. Attorney's Fees

39. Plaintiff also seeks to recover an unspecified amount in attorneys' fees related to all causes of action. *See*, Champine Decl., **Exhibit A**, Compl., Prayer ¶ 13. In the language of the D.C. District Court, "[w]hen attorney fees are added into the equation," the conclusion that more than \$75,000 is in controversy "becomes irresistible." *Parker-Williams, supra*, 53 F.Supp.3d at p. 153. This conclusion is only further supported by the fact that in the Ninth Circuit, district courts have the discretion to calculate fee awards using either the lodestar method or the "percentage-of-the-fund" method. *Fischel v. Equitable Life Assurance Soc'y*

1 of *U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002) (citations omitted). As such, even where
 2 “the Court lacks the information required to calculate [attorneys’] fees, it is difficult
 3 to believe that the amount in controversy [] could be lower than \$75,000 when the
 4 [attorneys’] fees are factored in along with” other available damages. *Parker-*
 5 *Williams, supra*, 53 F.Supp.3d at p. 152. Simply put, it is more than likely that
 6 Plaintiff’s attorney’s fees, alone, will exceed \$75,000 if this matter goes to trial.

7 **D. Punitive Damages**

8 40. Plaintiff also seeks punitive damages. See Champine Decl.,
 9 **Exhibit A**, Compl., Prayer ¶ 10. Many punitive damages verdicts exceed
 10 \$75,000.00. See *Dunn v. Allstate Insurance Co.*, 1997 WL 813002 at *2,
 11 No. 97CV1113JM (RBB) (S.D. Cal. Dec. 15, 1997) (since removing defendant was
 12 a corporation, “it [was] more likely that any award of punitive damages would
 13 exceed \$75,000.00”); see also, *Richmond v. Allstate Insurance Co.*,
 14 897 F.Supp. 447, 451 (S.D. Cal. 1995). See also, *Allen v. R&H Oil & Gas Co.*,
 15 63 F.3d 1326, 1336 (5th Cir. 1995) (concluding that a punitive damages claim was
 16 “more likely than not” to exceed the jurisdictional amount of \$75,000). For
 17 instance, the Court might find useful the following punitive damages verdicts:

- 18 1. *Songco v. Century Quality Management, Inc.*, Los Angeles Superior
 19 Court, 1997 WL 682397 (Cal.Super. Oct. 1997) (**\$245,000 in punitive**
 20 **damages** on \$17,982 in compensatory damages awarded in wrongful
 21 termination case).
- 22 2. *Hogan v. Archdiocese of Los Angeles*, 2001 WL 803303
 23 (Cal.Super.Ct. 2001) (awarding \$200,000 in punitive damages and
 24 \$35,000 in economic damages on a pregnancy discrimination cause of
 25 action).
- 26 3. *Ko v. Square Group, LLC*, Case No. BC 487739 (Sup. Ct. Cal. June
 27 16, 2014) (disability discrimination case resulting in punitive damages
 28 award of \$500,000).

1 4. *Stevens v. Von Companies, Inc.*, Case No. SC041162, 2006 WL
 2 4543812 (Sup. Ct. Cal. Oct. 1, 2006) (sex discrimination case
 3 resulting in punitive damages award of \$475,000).

4 41. Although Defendant adamantly denies that any award of damages, let
 5 alone punitive damages, are recoverable, Plaintiff's prayer for punitive damages,
 6 by itself, also satisfies the \$75,000 requirement.

7 42. Based on the nature of the allegations and damages sought in the
 8 Complaint, the evidence is sufficient to establish that Plaintiff has placed in
 9 controversy an amount exceeding the jurisdictional amount of \$75,000.00,
 10 exclusive of costs and interest. Accordingly, this State Court action may be
 11 removed to the United States District Court for the Central District of California –
 12 Southern Division because, at the time this action was filed and the present time,
 13 diversity jurisdiction exists.

14 **VII. THE REQUIREMENTS OF 28 U.S.C. § 1446 ARE MET**

15 43. In accordance with 28 U.S.C. section 1446(a), the Declaration of
 16 Christopher M. Champine in support of this Notice of Removal is accompanied by
 17 **Exhibits A through C**, which include copies of all process, pleadings, and orders
 18 served upon Defendant.

19 44. As required by 28 U.S.C. section 1446(b), the Notice of Removal was
 20 filed within 30 days after the Summons and Complaint was served on Defendant.
 21 *Hardy v. Square D Co.*, 199 F.Supp.2d 676, 680 (N.D. Ohio 2002).

22 45. In accordance with 28 U.S.C. section 1446(d), Defendant will give
 23 written notice of the original removal of this action to Plaintiff via his counsel and
 24 file a copy of that Notice with the Superior Court of California, County of Los
 25 Angeles.

26 **VIII. NOTICE PROVIDED TO STATE COURT AND PLAINTIFFS**

27 46. Written notice of this Notice of Removal and Removal in the United
 28 States District Court for the Central District of California will be served on

1 Plaintiff's counsel of record. A copy of the Notice to Adverse Party of Removal of
2 Action to Federal Court is attached to hereto as **Exhibit 1** (without exhibits because
3 this Notice is the exhibit). In addition, a copy of this Notice of Removal and
4 Removal will be filed with the Clerk of the Court in the Superior Court for the State
5 of California, County of Los Angeles. A copy of the Notice to State Court of
6 Removal of Action to Federal Court is attached hereto as **Exhibit 2** (without
7 exhibits because this Notice is the exhibit).

8 **THEREFORE**, Defendant respectfully requests that the above-mentioned
9 litigation, now pending before the Superior Court of California, County of Los
10 Angeles, be removed to the United States District Court for the Central District of
11 California.

12
13 Dated: June 15, 2022

Respectfully submitted,

FISHER & PHILLIPS LLP

14
15
16 By: /s/ Christopher M. Champine

Danielle Hultenius Moore

Aaron F. Olsen

Christopher M. Champine

Attorneys for Defendant

INTERNATIONAL PAPER

COMPANY

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Fisher & Phillips LLP and my business address is 4747 Executive Drive, Suite 1000, San Diego, California 92121.

On the below date, I served the foregoing document entitled **DEFENDANT'S NOTICE AND PETITION OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 133S, 1441, AND 1446** on all the appearing and/or interested parties in this action with ☐ the original ☒ a true copy thereof addressed as follows:

Samvel Setyan (SBN 325831)
SETYAN LAW, APC
750 E. Green Street, Suite 310
Pasadena, California 91101

*Attorney for Plaintiff,
Travonne Borders*

T: 213-618-3655
E: s.setyan@setyanlaw.com

- ☐ **[by ELECTRONIC SUBMISSION]** - I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.
- ☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.
- ☒ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed June 15, 2022 at San Diego, California.

Susan Jackson

Print Name

By: _____

Signature